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national farmers union

*In Union Is Strength*

National Farmers Union

Submission

to the

Railway Transport Committee  
of the  
Canadian Transport Commission

on the subject of

Canadian National Railway's Application  
for  
Variable Rates pursuant to Section 45(1)(b)  
of the  
Western Grain Transportation Act

Saskatoon, Sask.

March 27, 1987





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INTRODUCTION:

Prior to December 31, 1986, CN Rail filed public notice of its intent to publish rate reductions based on agreements with six named shippers pursuant to Section 45(1)(b) of the Western Grain Transportation Act.

The six shippers appearing in the formal public notice were:

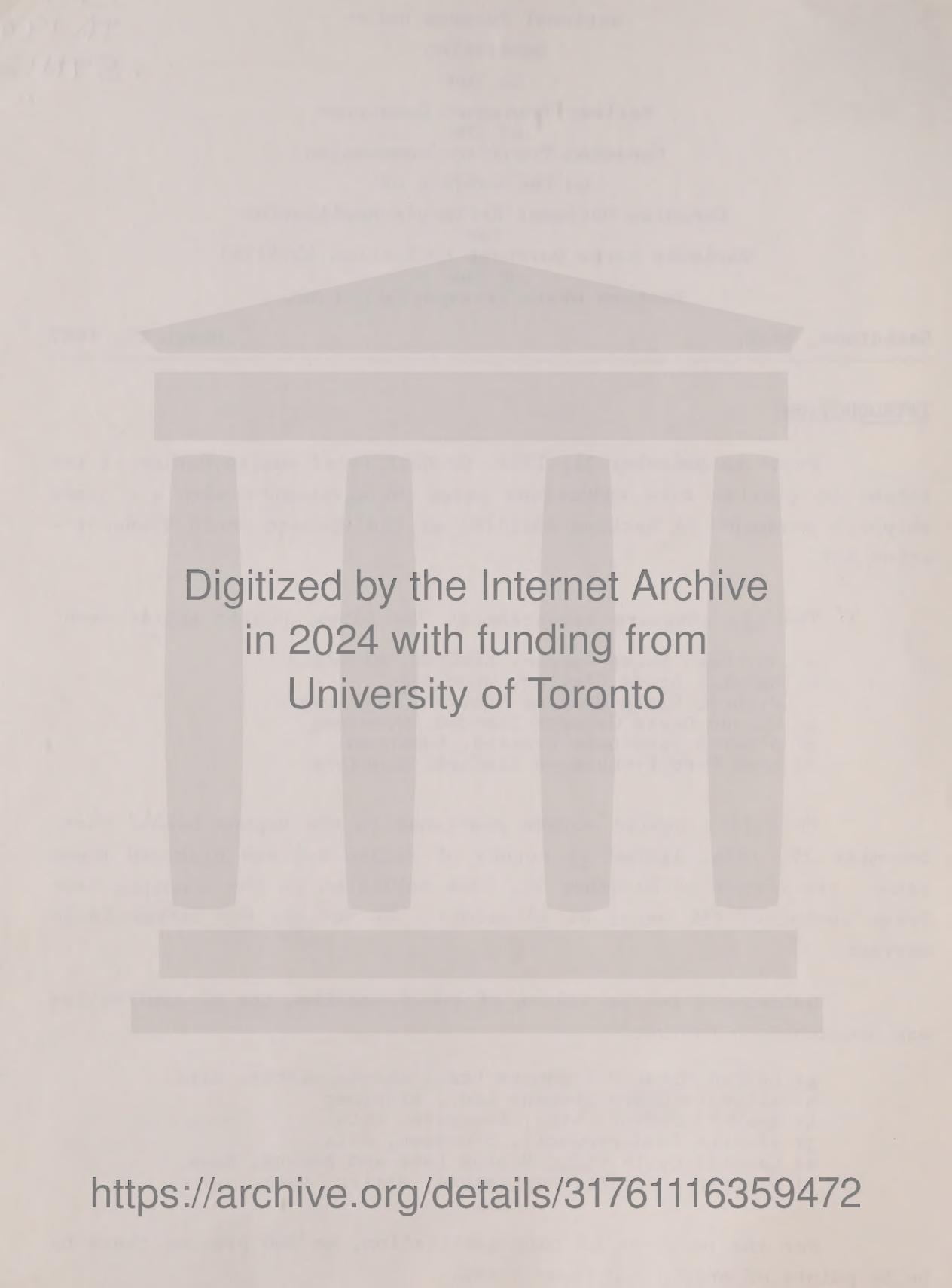
- a) Northern Sales Company Limited, Winnipeg
- b) Cargill Grain Limited, Winnipeg
- c) Pioneer Grain Company Limited, Winnipeg
- d) United Grain Growers Limited, Winnipeg
- e) Alberta Terminals Limited, Edmonton
- f) Stow Seed Processors Limited, Winnipeg

CN Rail's public notice published in the Regina Leader Post, December 29, 1986, listed 46 points of origin for its proposed lower rate. Its notice of December 31, 1986 published in the Winnipeg Free Press contained the names of 47 points. We believe the latter to be correct.

Subsequent to the filing of public notice, the CN application was broadened to include:

- g) United Oilseed Products Ltd., Lloydminster, Alta.
- h) Allstate Grain Company Ltd., Winnipeg
- i) NARP Processors Ltd., Sexsmith, Alta.
- j) Alberta Food Products, Sturgeon, Alta.
- k) Cargill Grain Ltd., Blaine Lake and Rowatt, Sask.
- l) Parrish & Heimbecker Limited, Hamlin, Sask.

For the purposes of this application, we now presume there to be 54 points of origin for lower rates.



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### THE CN PROPOSITION:

The CN proposition, in its own words\*, is:

"Shippers will receive a discount of \$1.50 per tonne from the rates determined for the 1987/88 crop year when they ship a block of at least 18 fully loaded hopper cars from one shipping point to a single port. The reduced rate under the application applies to all grains covered under the Western Grain Transportation Act." (underlining ours)

We submit that the named shippers in the CN application are not eligible to qualify as shippers for all grains covered under the Western Grain Transportation Act.

Schedule 1 of the W.G.T.A. includes "wheat", "oats" and "barley" as grains falling under the jurisdiction of the Act. The Canadian Wheat Board is the sole export marketing agency for these grains. The applicant grain companies act only as agents of the Board and consequently are not legally the shippers of the grains in question.

This fact has been established by the courts and is, we submit, well known to CN Rail, which with CP Rail, was a defendant in a \$690 million Class Action suit filed against them by our organization in the Federal Court of Canada on May 11, 1979.

The basis of the Class Action claim, in summary, was that the railway companies had failed to fulfill their responsibility under The Railway Act to provide Western Canadian grain producers with rail services when and where required in the movement of grain to market, at the time and in volume required to meet Canadian sales obligations, opportunities and other needs. It was additionally alleged that during the crop year 1977-78 and continuing into crop year 1978-79, the companies had in reality engaged in a withdrawal of service directed against the movement of grain.

Rudy Kiist, Vegreville, Alberta, and Don Robertson, Liberty, Saskatchewan, were cited as the "named plaintiffs" representing barley and wheat growers respectively.

The two railway companies and the Canadian Wheat Board, which



was named as a defendant without liability, on June 25, 1979 filed motions to have the action dismissed.

The formal court hearing on the motions for dismissal commenced on September 17, 1979, in Toronto before Judge J. Gibson.

On February 11, 1980, Judge Gibson handed down his decision in support of the railway companies' motion for dismissal.

A decision was immediately made by the NFU Executive to appeal Justice Gibson's ruling and an Appeal Court hearing was scheduled for Saskatoon, November 18 and 19, 1980.

On April 28th, 1981, the Court of Appeal consisting of Justices J. Urie, J. Le Dain and D.J. Maguire handed down their decision again upholding the motions for dismissal.

The NFU Executive, on May 27, decided to appeal the case to the Supreme Court of Canada. On June 19 the Supreme Court made a decision not to further hear the case.

The court rulings, in summary, stated:

1) That farmers did not have a claim for poor performance against the railway companies because the Canadian Wheat Board was the shipper of the grain involved.

2) Because farmers were not regarded as aggrieved persons, Justice Gibson ruled they could not launch an action as a class under court rules.

3) The Justice also ruled that the matter and amount of damages should have been a matter for the Canadian Transport Commission to determine, however, the Appeal Court disagreed. The Appeal Court stated the CTC could determine whether in fact damages had occurred, however, the Court did have jurisdiction to determine the amount of damages.

The railway companies were successful in winning their motion for dismissal of the Class Action claim as a result of the Appeal Court ruling. We believe CN Rail fully understands the significance of the



1981 ruling and its implications to the validity of their application. CN nonetheless, proceeded to seek support for its variable rate proposal from grain shippers in the probable hope that the Commission will turn a blind eye to the 1981 Appeal Court ruling.

We submit the Commission cannot ignore the court interpretation. Neither does the W.G.T.A. overrule the finding of the court.

The Canadian Wheat Board is not included as a shipper seeking a variable rate at the designated points. Indeed, it would be inappropriate for it to be included in a scheme that is intended to discriminate against certain branch lines and producers who rely on such lines for service. It is reported that CN Rail requested the Wheat Board for a ruling on the matter but the Board decided not to respond because it did not wish to become involved in the variable rate issue.

Without applicant shippers having the authority to claim shipper status over Wheat Board grains, CN's rate discount offer is deceiving and essentially fraudulent. Without the legal right to claim the \$1.50 per tonne CN has offered on all grains included in Schedule 1 of the W.G.T.A., it is highly improbable that shippers at most of the designated delivery points will ever be able to comply with the terms of CN's offer.

Further lack of credibility is cast on CN's claim to have fulfilled all the requirements of the W.G.T.A., including Section 17(2), which includes "the objective of maximizing returns to producers".

How can this be when 85-90 per cent of grain shipped by primary elevators does not fall within the legal framework of this application? Further evidence of CN's contradiction of its claim to have fulfilled the intent of Section 17(2) for maximizing returns can be found in its response of January 9 to the submission of the Saskatchewan Urban Municipal Association. CN states:

"Specifically, whether the \$1.50 per tonne reduction will be split between the grain company and producers is something beyond CN's control and most likely is something that will be determined by market conditions and the competitive position of the various shipper proponents of the rate reduction."



Of course it's "beyond CN's control" - because its applicant shippers aren't the legal shippers of 90 per cent of the grain that's moved by rail. One would hardly expect CN to offer \$1.50 per tonne reduction to someone who isn't paying the bill.

In its January 24 response to the NFU submission, CN states in part: "While producers will not be certain that 'their' grain will qualify for the rate reduction at the time of delivery to an elevator, the reduction will be known in time to influence the price of grain to 'customers'."

Quite clearly, this application in total represents an extremely poor undertaking by CN to maximize returns to producers.

The random pattern of delivery points selected for variable rates makes very little sense. Six delivery points on the entire CN main line between Edmonton and Winnipeg are named. One is designated between Saskatoon and Regina. None are named between Regina and Hudson Bay, Saskatchewan. This is hardly an effort which demonstrates a great deal of planning.

The main purpose of the CN application, we submit, is to attempt to convince this Commission that this application has merit in the hope that the Commission will establish a historic precedent and grant the application. If such a precedent is established on the merits of this application, then just about any future proposal for variable rates would be considered equally adequate.

#### THE CP POSITION:

CP Rail has not applied for variable rates. A CP spokesman, George Smellie\*, is quoted as saying: "We couldn't see the proposal to be good business either for ourselves or for producers generally."

Reading between the lines of Mr. Smellie's statement, it is possible to interpret it as meaning that CP does not consider CN's application as very important from a competitive point of view - even at contiguous points such as Saskatoon, Rosetown, Unity or Edmonton.

\* Western Producer, March 5, 1987 - news item "Variable rates aren't worth it - CP Rail"



A subtler implication may be CP Rail's recognition that the 1981 Appeal Court judgement is the Archille's heel of the CN application. CP, apparently sensitive over its corporate image, has now for the second time stood aside to allow CN to bear the burden of attempting to make the case for the extremely controversial variable rate issue before this Commission. We believe both are anxious for a precedent-establishing decision which is necessary before proceeding to the next item on their corporate agendas.

Saving money for producers is the least of their concerns.

#### A STRATEGY FOR BRANCH LINE ABANDONMENT:

The CN application cannot be judged independently of the broader issue of branch rail line abandonments. CN operates 55 grain-dependent branch lines totalling 3,224.3 miles. One purpose of the CN application, in spite of its hollow substance, is, in its own words, "to encourage traffic on its most efficient lines". This can only be accomplished by drawing volume from the branch line system to its lines of 250,000 pound steel.

But it is really a rather uninspiring way to attract more traffic to its better lines. If CN is really sincere, why not simply lower the rate by \$1.50 per tonne on all its 250,000 pound line delivery points? Indeed - why not eliminate the producer share of freight costs altogether on such lines? After all, at delivery points where the producer share of freight is \$5.97/t (Class 485 at 901-925 miles), CN would still get \$24.97/t from the government Crow benefit payment. That would be performance and competition. Why not offer the reduced rate at any delivery point on its main lines where a unit train of 18 cars can be assembled combining the loading efforts of two or more elevators? Why not ship the shortest route to the West Coast and save another \$2-\$3/tonne?

But that is not part of CN's game plan. Everyone knows competition destroys profits - and neither CN or CP are about to do that. Rather, they appear to favour reducing costs by reducing service - and thereby increasing profits.

It is not generally understood by farmers that although their



grain freight rate charges in the 1986-87 crop year were frozen at 1985-86 levels averaging about \$6/tonne, the amounts collected by the railway companies in Crow benefit payments on this year's rate scale is actually higher by 13 per cent.

This past winter CN Rail conducted a campaign of attack against the branch line system and proposed abandonment of several, including the Churchill line and some protected lines. CN Chairman, Ron Lawless\* says CN is trying to "smoke out into the open those lines that are under-utilized and show they are costly". The company's strategy in applying for variable rates is obviously intended to further under-utilize those lines and make them even more costly and thus more likely candidates for abandonment.

CN Rail's Doug Campbell<sup>+</sup> says that: "If the politics of the grain transportation system could be set aside, farmers' grain handling costs could be cut by \$3 per tonne, enough to eliminate the \$3 per tonne rate increase expected in August, 1987."

We suggest that if politics were practically applied, the two rail lines would be integrated, least cost routes would be taken to port and backhauls eliminated. Instead, railway executives continue to harass producers.

According to Campbell, retirement of 25% of high-cost branch lines would result in a "saving" of \$1 per tonne. It should be noted that such a saving would be spread over the entire CN system and be totally achieved at the expense of producers who now use the branch lines in question.

The branch lines in question are referred to as "dogs" in the "Grainews" article. We suggest that many branch lines have been converted into "dogs" by CN through neglect and poor service because of the company's broader objective to abandon them at the earliest opportunity. When the company refers to "reducing cost", it is really referring to its cost - but ignores the added cost to farmers who will be directly affected by abandonment through reduced service, increased

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\* Western Producer Feb. 12, 1987 article "CN says it's facing economic reality"

+ CN Assistant Vice President for Western Canada, Doug Campbell, quoted in "Grainews", December, 1986



hauling costs, higher land taxes, and loss of time, to name a few.

This intimidating approach directed by CN toward producers through its attack against branch line retention is not unlike CN and CP's attack on the Crow rate prior to passage of the W.G.T.A. and their poor performance in grain movement prior to the filing of our Class Action suit.

An additional consideration in the corporate strategy of the railway companies, should this Commission introduce the variable rate distortion, is their desire to alter the method of payment of the Crow benefit. Such a switch would open wide the floodgates for variable rates and the possibility for offering producers even bigger "savings" if only the branch line patrons would alter their delivery patterns! We predict the "dogs" would suddenly multiply.

We are not necessarily defending the continued existence for all time of all branch lines. Considerable rail line rationalization has already occurred and more is likely in future. Our concern is with the manner in which the selection method is being implemented to determine which lines may survive and which will be abandoned. We look upon variable rates as a lever the railway companies intend to employ to further erode the economic viability of the branch line system. They cannot be entrusted with the power to manipulate the configuration for the future of rural communities.

The problem runs much deeper than merely satisfying the corporate goals of the railway companies. There are social considerations. People are involved. There are communities on branch lines where people have homes and jobs. Rail lines, elevators, post offices are part of the fabric of such communities, as are farmers. If the commerce of these communities is redirected by corporate decision-makers who couldn't care less about the resulting social upheaval and economic consequences they invoke upon others, then we are faced with a massive example of political irresponsibility.

#### THE CN APPLICATION AND ELEVATOR COMPANIES:

The Commission needs also to determine whether the applicant grain handling companies have been innocent victims of CN's "smoke and mirrors" application for variable rates or participated as supporting



accomplices to pursue their own private agendas.

We suspect the latter is the case. It is difficult to believe the shipper companies do not fully understand the status of the Wheat Board as the legal shipper of export wheat, oats and barley.

Their innocuous statements on how producers would benefit from the variable rates confirms this. The only persons in this whole charade who do not yet fully understand the situation are most farmers themselves. We submit some shipper applicants are attempting to consolidate their elevator operations through the variable rate mechanism.

Pioneer Grain, for example, is seeking a variable rate at Norquay. At the adjoining delivery points of Hyas to the west and Pelly to the east, it also has facilities. By diverting more volume through Norquay, the two elevators at Hyas and Pelly may become potential candidates for closure.

A similar situation exists at Rosetown. Pioneer has smaller operations at the nearby towns of Fiske, Sovereign and Milden. These three points could also become candidates for closure. Although it does not currently have a facility at Unity, Pioneer has nonetheless applied for a variable rate at that delivery point.

U.G.G. has put the wheels in motion to consolidate at Eston. We predict they may plan to close the neighbouring operations at Snipe Lake and Richlea. A lower shipping rate offered at Elrose may hasten closure of the Wiseton operation. Beechy may fall victim to Lucky Lake. Davidson is apparently designated to attract grain from Girvin.

We are not attempting to respond in this submission to the responses of elevator companies to our letter of appeal. We found them to be mainly patronizing and self-serving justifications for their participation in this counterfeit application.

The elevator system, too, has undergone rapid changes toward consolidation. The number of prairie primary elevator operating units have been reduced from 2,546 to 1,768 in the past ten years, or by 31 per cent. Of 1,101 delivery points, 586 or 53 per cent are now



single company points. In the coming years many more elevator and delivery point closures will occur without the mechanism of variable rates.

We do not necessarily oppose their apparent efforts to consolidate operations but why choose the variable freight rate method when the bulk of grain moving through their designated facilities will not earn the lower freight rates?

If elevator companies wish to compete and consolidate, they would be better advised to reduce their grain elevation charges at designated points and pass the savings on directly to farmers on all grains at the time of delivery. These rates they do control. Many rates on elevation and handling now exceed the farm share of freight rates. Lower elevation rates would be particularly appropriate when farm-gate grain prices are in their current depressed state. (See Appendix A)

The reality is that grain handling companies would rather appear to be providing charity at CN's expense which, in this instance, is only an illusion. Under the circumstances, we submit the applicant elevator companies are party to an application for reduced rates which serves no practical purpose in achieving the objectives of Section 17(2) of the W.G.T.A.

In summary, the application of CN Rail is a sham and a farce and should be dismissed in total for the following reasons:

1. As a consequence of the federal Appeal Court ruling of April 28, 1981, the applicant grain companies who have joined CN Rail in this application are not the legal shippers of wheat, oats and barley which they have purchased as agents of the Canadian Wheat Board.

2. The Canadian Wheat Board as the legal shipper of such grains has not joined in this application seeking variable rates from the designated shipping points.

3. The volumes of C.W.B. grain shipments constitute 85-90 per cent of total prairie grain rail movement. Without legal shipper status over such grains, the ability of applicant grain companies to meet CN conditions for rate discounts is largely forfeited.



4. The CN application fails utterly to satisfy the requirements of Section 17(2) of the W.G.T.A. that returns to producers be maximized. Neither CN or the applicant elevator companies can in any way assure that grain freight rates will in fact be directly reduced to producers as a consequence of limited rate reductions coming into effect. Further, they cannot assure that any of the \$1.50/tonne variable rate would accrue to producers.

5. The primary purpose the CN application could serve, if approved, would be to have established a historic precedent for the introduction of the variable rate concept enabling CN to exert additional economic pressure to undermine the viability of its branch line system for purposes of early abandonment and provision of reduced services and higher grain transportation costs to affected producers.

6. The agenda of the elevator companies who have joined CN in this application are largely presentational under the circumstances. As only agents for the C.W.B., the majority of grain shipments from their facilities do not qualify for a variable rate discount. Their participation can primarily serve as a vehicle for consolidation of their elevator facilities and be used as an attempt to improve their local handling share of grains.

#### CONCLUSION:

A heavy responsibility rests with the Commission on the matter of the decision it may reach on this application.

We trust our presentation will have contributed toward a decision to reject the CN application.

All of Which is Respectfully  
Submitted by:

NATIONAL FARMERS UNION



APPENDIX A

CANADIAN GRAIN COMMISSION

SUMMARY - PRIMARY ELEVATOR TARIFFS

I. ELEVATION

(1) Receiving, elevating and loading out

AUGUST 1, 1986

MAXIMUM TARIFFS	8.53	13.99	10.58	8.96	13.42	13.65	9.38
	Wheat (including Durum)	Oats	Barley	Rye	Flax- seed	Rape- seed	Corn
- dollars per tonne -							
Alberta Terminals							
Calgary, Edmonton & Lethbridge	6.15	8.00	7.25	6.36	9.25	9.25	7.25
High Level	7.50	7.50	7.50	7.50	7.50	7.50	7.50
Alberta Wheat Pool	6.25	9.30	7.80	6.15	8.10	8.10	6.70
Allstate Grain	7.50	12.50	8.50	8.50	12.00	12.50	9.00
Canbra Foods	-	-	-	-	-	13.65	-
Cargill Limited							
Manitoba	7.02	10.45	8.71	8.69	13.02	12.24	9.11
Saskatchewan	6.27	9.13	7.62	8.69	13.02	12.24	9.11
Alberta/B.C.	6.26	9.32	7.81	8.69	13.02	12.24	9.11
Continental Grain 1/	5.75	8.00	7.00	8.50	11.50	11.50	9.38
Great Northern Grain							
Terminals Ltd. 2/	6.26	9.32	7.82	7.00	9.25	9.25	-
Johnson Seeds, S.S., Ltd.	7.29	10.73	8.87	7.51	12.75	13.00	-
Manitoba Pool Elevators	7.02	10.45	8.72	7.59	8.83	8.75	7.73
McCallister Pea & Seed	8.53	13.99	10.58	8.96	13.42	13.65	9.38
Ogilvie Mills	8.53	-	-	-	-	-	-
Palliser Grain	6.00	9.45	7.45	6.35	8.50	8.50	6.30
Parrish & Heimbecker							
Moose Jaw, Saskatoon, Hamlin & Yorkton	5.92	8.47	7.28	6.21	8.91	8.56	6.59
Transcona	6.67	9.80	8.25	7.50	8.80	8.70	7.00
Lethbridge, Medicine Hat & Raymond 3/	5.75	9.00	7.36	5.80	7.60	7.50	6.50
All Other Manitoba Locations	7.02	10.45	8.70	7.50	8.80	8.70	7.00
All Other Saskatchewan Locations	6.27	9.12	7.63	6.21	8.91	8.56	6.59
All Other Alberta Locations 3/	6.23	9.27	7.80	6.00	8.00	8.00	6.69
N.M. Paterson							
Manitoba	7.00	10.42	8.70	7.60	8.79	8.74	7.75
Saskatchewan	6.25	9.10	7.61	6.45	8.90	8.84	6.26
Alberta	6.25	9.32	7.81	6.54	8.49	8.42	6.75
Pioneer							
Manitoba	7.02	10.45	8.72	7.00	8.50	8.75	8.62
Saskatchewan	6.26	9.12	7.62	7.00	8.50	8.75	8.62
Alberta	6.26	9.32	7.82	7.00	8.50	8.75	8.62
Red Deer Grain Inc.	-	-	-	-	-	13.65	-
Saskatchewan Wheat Pool	6.27	9.12	7.63	6.21	8.95	9.06	6.21
Stow Seed Processors	7.29	10.73	8.87	7.51	11.57	11.57	8.25
U.G.C.							
Manitoba	7.02	10.45	8.72	7.59	8.83	8.75	7.29
Saskatchewan	6.27	9.13	7.63	6.21	8.95	9.06	7.51
Alberta & B.C.	6.26	9.32	7.82	6.16	8.14	8.14	7.51
Thorhild #2 & Bonnyville	5.00	7.46	6.25	4.92	6.51	6.51	6.00
Weyburn Inland Terminals	6.25	9.11	7.61	6.19	8.93	9.04	5.36

1/ Effective August 12, 1986

2/ Effective September 11, 1986

3/ Effective August 21, 1986







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